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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,718	06/23/2006	Antoni Ryszard Slabas	056222-5088-US	5793

9629 7590 09/02/2010  
MORGAN LEWIS & BOCKIUS LLP  
1111 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004

EXAMINER
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COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
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1638

MAIL DATE	DELIVERY MODE
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09/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/551,718	<b>Applicant(s)</b> SLABAS ET AL.	
	<b>Examiner</b> Cynthia Collins	<b>Art Unit</b> 1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 17-33 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-14 and 17-33 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I**, claim(s) 1-7, 10, 12-14 and 29, drawn to a method comprising contacting a plant cell with an inhibitor of ATPase, a composition comprising said inhibitor, and the use of the said inhibitor as an active agent in the preparation of a herbicidal composition.

**Group II**, claim(s) 1-10, 12-14, 29 and 30, drawn to a method comprising contacting a plant cell with a nonhydrolyzable NTP analogue, a composition comprising said analogue, and the use of the said analogue as an active agent in the preparation of a herbicidal composition.

**Group III**, claim(s) 1-6, 10 and 12-14, drawn to a method comprising contacting a plant cell with an agent which hydrolyzes extracellular NTP, and a composition comprising said agent.

**Group IV**, claim(s) 17-20, drawn to a method comprising administering a viability-preserving nucleotide sequence.

**Group V**, claim(s) 17-18, drawn to a method comprising administering a viability-preserving polypeptide.

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**Groups V-LXIII**, claim(s) 21-28, drawn to a method comprising introducing into a plant or a part thereof a recombinant nucleic acid molecule comprising a sequence of at least 200 bases having at least 90% sequence identity with a sequence encoding one of the polypeptides listed in Table 3. Group V is directed to a method that utilizes a recombinant nucleic acid molecule comprising a sequence of at least 200 bases having at least 90% sequence identity with a sequence encoding the polypeptide listed as number 1 in Table 3, Group VI is directed to a method that utilizes a recombinant nucleic acid molecule comprising a sequence of at least 200 bases having at least 90% sequence identity with a sequence encoding the polypeptide listed as number 2 in Table 3, ... Group LXIII is directed to a method that utilizes a recombinant nucleic acid molecule comprising a sequence of at least 200 bases having at least 90% sequence identity with a sequence encoding the polypeptide listed as number 59 in Table 3.

**Groups LXIV-CXXII**, claim(s) 1-5, 10-14 and 31-33, drawn to a method comprising contacting a plant cell with an inhibitor or agonist of one or more of the polypeptides in Table 3, a composition comprising said inhibitor or agonist, and use of said inhibitor or agonist in the preparation of a herbicidal composition. Group LXIV is directed to a method that utilizes an inhibitor or agonist of the polypeptide listed as number 1 in Table 3, Group LXV is directed to a method that utilizes an inhibitor or agonist of the polypeptide listed as number 2 in Table 3, ... Group CXXII is directed to a method that utilizes an inhibitor or agonist of the polypeptide listed as number 59 in Table 3.

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The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The technical feature linking the inventions of Groups I- CXXII is a substance having the property of controlling the viability of a plant cell by up- or down- regulating a cell death pathway which is activatable by depleting the concentration of NTP in the external environment of the cell. However, a substance having the property of controlling the viability of a plant cell by up- or down- regulating a cell death pathway which is activatable by depleting the concentration of NTP in the external environment of the cell is obvious or anticipated over WO 01/64859 (7 September 2001) and US 2002/160915 (31 October 2002), and therefore does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the

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election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cynthia Collins/  
Primary Examiner, Art Unit 1638

CC